

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
AMERICAN BROADCASTING COMPANIES,
INC., DISNEY ENTERPRISES, INC., CBS
BROADCASTING INC., CBS STUDIOS INC.,
NBCUNIVERSAL MEDIA, LLC, NBC
STUDIOS, LLC, UNIVERSAL NETWORK
TELEVISION, LLC, TELEMUNDO NETWORK
GROUP LLC, WNJU-TV BROADCASTING
LLC,

Plaintiffs,

v.

AEREO, INC.,

Defendant.

----- X
WNET, THIRTEEN, FOX TELEVISION
STATIONS, INC., TWENTIETH CENTURY
FOX FILM CORPORATION, WPIX, INC.,
UNIVISION TELEVISION GROUP, INC., THE
UNIVISION NETWORK LIMITED
PARTNERSHIP, and PUBLIC
BROADCASTING SERVICE,

Plaintiff,

v.

AEREO, INC. f/k/a BAMBOOM LABS, INC.,

Defendant.

----- X
**DECLARATION OF SHERRY BRENNAN IN SUPPORT OF REPLY MEMORANDUM
ON REMAND IN SUPPORT OF A PRELIMINARY INJUNCTION**

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Declaration of Sherry Brennan

I, Sherry Brennan, declare as follows:

1. I am employed by Fox Cable Network Services, LLC as Senior Vice President, Distribution Strategy & Development. In this position, I research and develop television content distribution strategy for various media platforms on behalf of numerous Fox entities including Fox Television Stations, Inc. and Twentieth Century Fox Film Corporation, two of the plaintiffs in this action (collectively, “Fox”). I make this declaration based on my personal knowledge and my knowledge of the television industry, in which I have worked for 25 years.

2. A major source of the Fox and the other broadcast networks’ revenues is derived from advertising that appears during broadcasts of television programming. The value of advertising is dependent upon viewership of the advertisements placed within our programming. Advertisers rely on accepted industry research and data that measure the number of viewers who actually view the commercials during a particular program (sometimes called the number of “impressions”). The traditional method to measure television viewership and impressions, and more significantly, the only measure universally accepted by advertisers, are the metrics compiled by The Nielsen Company (“Nielsen”). More specifically, the most influential commercial viewership and impressions rating is the “C3” rating generated by Nielsen. C3 quantifies the average number of commercials viewed during a particular program when it airs on standard television and for the next three days (in order to capture data from viewers who watch the program later on their DVRs). Due to advertisers’ reliance on Nielsen’s C3 metric, it is essentially the currency by which advertising sales are made.

3. On July 15, 2014, Nielsen announced the commercial availability of its Online Campaign Ratings which measures viewership of advertisements on mobile devices such as

tablets and smartphones. The July 15 press release further explains that, to be measured, the online video must incorporate Nielsen's "proprietary mobile software development kit" ("SDK"). As part of my duties involving distribution strategies, I am familiar with Nielsen's development of its Online Campaign Ratings and SDK technology to measure viewership of advertisements placed within television programs watched via the Internet.

4. While Nielsen announced the commercial availability of Online Campaign Ratings on July 15, 2014, Nielsen made clear that the Online Campaign Ratings have not yet been incorporated into the Nielsen TV ratings (i.e., C3), saying only that this will happen "later this year." A true and correct copy of this press release is attached hereto as **Exhibit A**. The July 15 press release further states that, to be measured, the online video must incorporate Nielsen's SDK. An earlier Nielsen press release from October 28, 2013 further explains that Nielsen's tracking of online advertising relies on the use of "audio watermarks, metadata or tags associated with the content and related advertising." A true and correct copy of this press release is attached as **Exhibit B**. What this means is that measuring of viewership using SDK requires the acquisition, implementation and integration of SDK software and protocols by the distributor, the advertiser and the content provider. The implementation of the SDK technology requires television networks to "tag" their programs using SDK software in ways readable by the SDK software that also have to be integrated by Internet distributors into their websites and mobile applications. To my knowledge, Aereo has not, nor has it asserted that it has, even discussed implementing Nielsen's SKD into its apps, much less done so. In addition, unless the distributor of the "tagged" programs and advertisements integrates SDK into its websites and mobile applications and enables its servers to communicate the SDK data to Nielsen's servers, Nielsen will not be able to measure anything. Unlike Nielsen's C3 metric, Nielsen's SDK

technology has not been widely adopted or implemented by the television industry (e.g., distributors, including but not limited to multichannel video programming distributors, content providers, the broadcast networks). And, based on my discussions with Fox's licensed distribution partners, there are serious concerns about SDK because, among other things, many programming distributors are reluctant to allow Nielsen access to their customers' Internet viewing habits for business and privacy reasons and the SDK software and "tagging" described below is extremely expensive to implement and monitor.

5. Based on the above concerns about Nielsen's SDK technology, it may not ever be widely adopted or implemented by the television industry in the foreseeable future. Further, because OCR is not incorporated in Nielsen's C3 metric, the currency by which advertising sales are made, Nielsen is unable to credit Fox or any other broadcast network with any of the advertising that has been viewed on mobile, Internet connected devices via Aereo's unauthorized service. In sum, contrary to Aereo's suggestion, Nielsen is not measuring Aereo or viewership on the Internet generally.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of September, 2014 at Los Angeles, California.


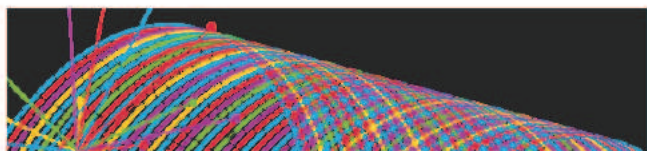

Sherry Brennan

Exhibit A



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PRESS ROOM

LEADING AGENCIES, ADVERTISERS, MEDIA COMPANIES, AD NETWORKS ADOPT NIELSEN MOBILE AD MEASUREMENT

07-15-2014

Clients Include DigitasLBi and GroupM; Adap.tv, AdColony, BrightRoll, Collective, Defy Media, Drawbridge, Evolve Media, Freewheel, Innovid, LiveRail, Lotame, Rhythm NewMedia, Rocket Fuel, Torrential, Tremor Video, TubeMogul, Twitch, Vdopia, Verve, Videology and YuMe

Launch of Industry's First and Only Comprehensive In-App Mobile Ad Measurement Sets the Stage for Inclusion of Mobile in TV Ratings

New York — July 15, 2014 — Nielsen today announced that the commercial availability of mobile measurement in Nielsen Online Campaign Ratings has been met with significant client adoption—including industry leading agencies, advertisers, media companies, ad networks and platforms. The recent launch positions Nielsen's marquee digital measurement offering as the only robust solution available today that provides a campaign's full digital audience—across computers, tablets and smartphones.

Adoption of the expanded Nielsen Online Campaign Ratings has been considerable, with dozens of media sellers opting in to measure mobile on their sites, apps and networks. These include Adap.tv, AdColony, BrightRoll, Collective, Defy Media, Drawbridge, Evolve Media, Freewheel, Innovid, LiveRail, Lotame, Rhythm NewMedia, Rocket Fuel, Torrential, Tremor Video, TubeMogul, Twitch,

Vdopia, Verve, Videology and YuMe.

"The response to our mobile launch has been incredible, with existing Nielsen Online Campaign Ratings clients clamoring for it and a slew of new clients coming on board for the opportunity to understand reach in the dynamic mobile environment for the first time," said Lynda Clarizio, President, U.S. Media, Nielsen. "With this adoption, the enhanced Nielsen Online Campaign Ratings stands to transform the mobile advertising industry—bringing the confident investment and accountability that only third-party, comprehensive metrics can deliver."

The availability of comprehensive smartphone and tablet measurement in Nielsen Online Campaign Ratings provides clients with a complete view of their digital audience for the first time. Nielsen not only provides highly precise demographics on a campaign running across platforms, but will also provide an accurate count of how many consumers saw an ad only on a PC, only on mobile and on both—for total and device-specific reach. Nielsen Cross-Platform Campaign Ratings, which offers a holistic view of ads across TV and digital, has also been augmented to include mobile measurement.

The expansion of Nielsen Online Campaign Ratings to mobile device apps and browsers measures all ads, including video and display, for iOS and Android platforms. Mobile measurement in Nielsen Online Campaign Ratings builds on Nielsen's Media Rating Council-accredited methodology* for measuring ads in computer browsers. The solution leverages Nielsen's proprietary mobile software development kit (SDK), which forms the foundation for the inclusion of mobile measurement into TV ratings later this year.

"Our goal is to measure audiences wherever and however they might access content. The launch of mobile in Nielsen Online Campaign Ratings paves the way for the debut of Digital Program Ratings and the inclusion of mobile measurement in TV ratings later this year," said Megan Clarken, EVP, Global Product Leadership, Nielsen. "This reinforces our leadership position as the only provider of industry standard-setting cross-platform measurement."

NOTE

*Nielsen Online Campaign Ratings is the first Internet measurement system that provides demographic ratings for online advertising campaigns of any size with certain metrics comparable to those used for TV advertising to be accredited by the MRC.

INDUSTRY SUPPORT FOR THE ENHANCED NIELSEN ONLINE CAMPAIGN

RATINGS

DigitasLBI: "Mobile has become a key component of every media strategy developed at DigitasLBI; it's therefore critical to gain a line of sight into how mobile plans are being delivered by our partners, consistent with our other digital plans. Having mobile in Nielsen Online Campaign Ratings will help us ensure that we are reaching the right people, at the right time, on the right platform," said Pedro M. Perez, Senior Vice President, Strategy & Analysis at DigitasLBI.

GroupM: "Adding mobile measurement to Nielsen Online Campaign Ratings and Nielsen Cross-Platform Campaign Ratings is an important move to being able to fully understand a consumer's exposure to video advertising," said Lyle Schwartz, managing partner and director of research and marketplace analysis at GroupM Worldwide.

Adap.tv: "As TV and digital have continued to come closer together, AOL and Nielsen have worked together on a number of initiatives to move towards the reality of a standard cross-screen measurement, most recently a beta program bringing TV-comparable audience measurement to all of AOL's new series," said Henk van Niekerk, Senior Vice President, Publishers and Ad Networks at Adap.tv, a division of AOL Platforms. "The expansion of Nielsen Campaign Ratings to mobile devices is another key step towards bringing greater measurement parity to advertising, regardless of which digital screen it is viewed on."

AdColony: "Mobile in Nielsen Online Campaign Ratings is a big step in the right direction for mobile video, and we believe it can unlock future mobile spending in ways that complement TV," said David Kurtz, Chief Product Officer. "As media companies extend their content across mobile devices, brands are seeking out ways to buy high-quality mobile video advertising in streamlined, dependable and easy-to-measure ways. The launch of mobile in Nielsen Online Campaign Ratings adds the ability to provide clients with the additional audience validation they want, allowing them to optimize and measure according to familiar TV metrics."

BrightRoll: "Brands are increasingly embracing the power of mobile in their marketing strategy and as such are seeking ways to validate the efficiency of their campaigns across smartphones and tablets," said Tim Avila, SVP of Marketing Operations, BrightRoll. "We are proud to be among the first video advertising platforms to integrate and provide mobile audience measurement through the enhanced Nielsen Online Campaign Ratings product to our clients."

Collective: "The integration of mobile measurement into Nielsen Online Campaign Ratings helps close the gaps between delivery and measurement, and between TV, PC and mobile. It provides a consistent mechanism for validating our core principle of reaching audiences across screens. The

combination of our capabilities with Nielsen Online Campaign Ratings and Nielsen's other measurement solutions now enables an end-to-end unified view of audiences and audience-based advertising like never before," said Justin Evans, Chief Strategy Officer, Collective.

Drawbridge: "Our agency and advertiser clients depend on Drawbridge to not only optimize their cross-device ad campaigns for the highest return on ad spend, but to show them detailed reporting on campaign impact, including brand lift, engagement and other metrics," said Drawbridge VP Marketing Daryl McNutt. "The Nielsen Online Campaign Ratings mob offering is a major step forward that will enhance our mobile and cross-device measurement solutions, and we know our clients will be excited to learn that we're working with Nielsen as an early adopter of this solution."

Evolve Media: "Evolve Media experienced great success by becoming the first publisher to integrate Nielsen Online Campaign Ratings reporting for native video campaigns, so it was a natural progression for us to take this technology to the second screen. We know there is a demand for mobile campaign measurement within the industry, and we're looking forward to integrating the technology within our premium mobile campaigns," said Fabien Ricard, Vice President of Operations, SpringBoard Video – an Evolve Media company.

FreeWheel: "As the digital television landscape continues to span platforms and devices, the need for solutions that bridge the gap between online and offline becomes even more critical," said James Rothwell, Vice President, Business Development, FreeWheel. "Including smartphones and tablets in Nielsen Online Campaign Ratings is a significant step towards creating a unified television advertising market for our customers and the industry as a whole."

Innovid: "With ever-growing screen fragmentation, we see more and more marketers and agencies thinking about the 'audience' and recognizing the need to break down video device silos. One big missing piece to fully living that dream was understanding the audience composition and overlap between platforms. Adding mobile to Nielsen Online Campaign Ratings solves that, and we believe this to be a massive catalyst for cross-screen campaigns coming down the pipe," said Tal Chalozin, CTO and co-founder.

Rhythm NewMedia: "Despite annual increases in overall mobile ad spend, many brand marketers are still reluctant to fully leverage mobile advertising at scale in their media buys. The audience measurement tools traditional used for desktop media simply don't work in the cookie-less, app-based world of mobile", said Josh Stivers, VP of Ad Solutions at Rhythm. "Thankfully, Nielsen Online Campaign Ratings has cracked the code of mobile audience measurement and validation. We're looking forward to onboarding all our advertisers over time."

Rocket Fuel: "Rocket Fuel is committed to delivering optimal audiences across all screens and increasing media effectiveness across TV and digital," said Simon Hayhurst, SVP Product and Business Development. "We're delighted to be at the forefront of providing audience verification for mobile devices to help our brand buyers spend with confidence across all digital touch points."

Torrential: "Mobile video is exploding, essentially putting a personal, always-on smart TV in every brand consumer's hand," said Doug McCurdy, President and Co-Founder, Torrential. "We're thrilled to be a launch participant. With this expansion of Nielsen Online Campaign Ratings to mobile, we can now provide our ad agency and brand clients the standard, cross-platform audience measurement metrics they require to invest in mobile video at scale."

Tremor Video: "We're laser-focused on offering our clients the ability to optimize across all-screens, regardless of whether their goal relates to brand performance or demographics," said Katie Seitz Evans, VP of Strategy and Operations at Tremor Video. "This release of mobile Nielsen Online Campaign Ratings will now allow our clients to measure and optimize to key demographics across devices."

TubeMogul: "The second screen is rapidly becoming the first screen in video, especially for younger viewers," comments Keith Eadie, Chief Marketing Officer at TubeMogul. "Nielsen Online Campaign Ratings for mobile is what was missing, bringing accountability to mobile video through accurate, third-party measurement. Thanks to Nielsen, marketers using TubeMogul's software can now seamlessly plan across every screen, comparing TV to video everywhere in terms of cost and reach."

Twitch: "Mobile is an increasingly important piece of the pie for any company in the digital media space," said Jonathan Simpson-Bint, Chief Revenue Officer, Twitch. "At Twitch, we're seeing around 30% of our views come from mobile devices, and it's more important than ever for our advertisers to have a comprehensive understanding of the ways the Twitch audience is interacting with their brand messages. This helps them get a complete picture for both Web and mobile."

Vdopia Inc.: "The introduction of TV-like 'standardized ratings' for mobile will open the floodgates for mobile video advertising. This will provide marketers with the confidence to go cross screen, and it will give mobile publishers and ad-tech players credibility for delivering measurable audience reach. Vdopia welcomes this move by Nielsen and is excited to be part of the launch," said Saurabh Bhatia, Co-founder, Chief Business officer, Vdopia Inc.

Verve: "We're very excited to leverage Nielsen Online Campaign Ratings as part of Verve's ongoing efforts to ensure we are the mobile location advertising leader in providing our clients transparency,

accountability and verification," said James Smith, Chief Revenue Officer of Verve. "Verve's location intelligent platform combined with Nielsen's audience insight will deliver crucial advertising effectiveness information and therefore more value for advertisers."

Videology: "As television and video continue to converge, the ability for advertisers to plan and buy holistically across devices has become an imperative. And unified buying hinges upon unified measurement metrics," said Scott Ferber, Chairman and CEO, Videology. "Nielsen propelled the industry forward by introducing common ratings across TV and online video, and we believe extending these ratings to mobile is an equally important advancement. We are eager to offer this new solution to our platform clients."

YuMe: "As YuMe is focused on providing digital video for brand advertisers, as well as measurement solutions across all screens, we applaud the launch of Nielsen Online Campaign Ratings for mobile," said Jayant Kadambi, Co-Founder and CEO of YuMe. "By now supporting and validating mobile audience composition, Nielsen takes a major step forward for the industry."

The clients named above are among those who are ready to measure mobile advertising through Nielsen Online Campaign Ratings or actively engaged in the certification process.

ABOUT NIELSEN CAMPAIGN RATINGS

Nielsen Campaign Ratings delivers clients comprehensive, comparable metrics for TV and digital advertising campaigns. Part of the Nielsen Campaign Ratings product suite, Nielsen Online Campaign Ratings combines Nielsen panel data with aggregated, anonymous, privacy-protected demographic information from participating data providers. Campaign reporting is available daily, providing vital delivery information in-flight to both advertisers and publishers. Nielsen Cross-Platform Campaign Ratings, also part of the suite, draws upon Nielsen Online Campaign Ratings as well as Nielsen's proprietary TV data to deliver unduplicated and incremental reach, frequency and GRP measures for TV and digital advertising.

ABOUT NIELSEN

Nielsen (NYSE: NLSN) is a global information and measurement company with leading market positions in marketing and consumer information, television and other media measurement, online intelligence and mobile measurement. Nielsen has a presence in approximately 100 countries, with headquarters in New York, USA, and Diemen, the Netherlands. For more information,

visit www.nielsen.com.

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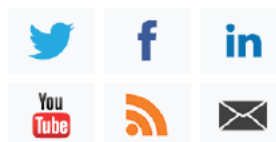
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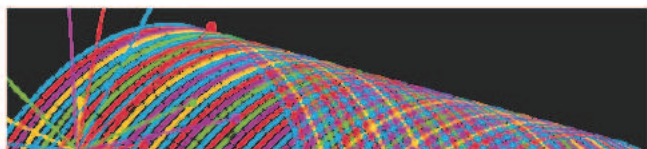
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Exhibit B



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NEWSWIRE

ANY WAY YOU WATCH IT: NIELSEN TO INCORPORATE MOBILE VIEWING INTO TV RATINGS AND DYNAMIC DIGITAL RATINGS

MEDIA AND ENTERTAINMENT | 10-28-2013

We can all agree that consumers have embraced a new age of viewing video content lock, stock and barrel. From traditional content offered by TV broadcasters to native content from digital publishers, technological advancements mean consumers now have myriad options to watch what, when and how they want.

Industry breakthroughs like multi-room DVRs, Internet-connected TVs, tablets, smart phones and even in-browser and app content players deliver more choices and flexibility than ever before. They've also led to audience fragmentation and marketplace challenges regarding how to properly value and monetize video content.

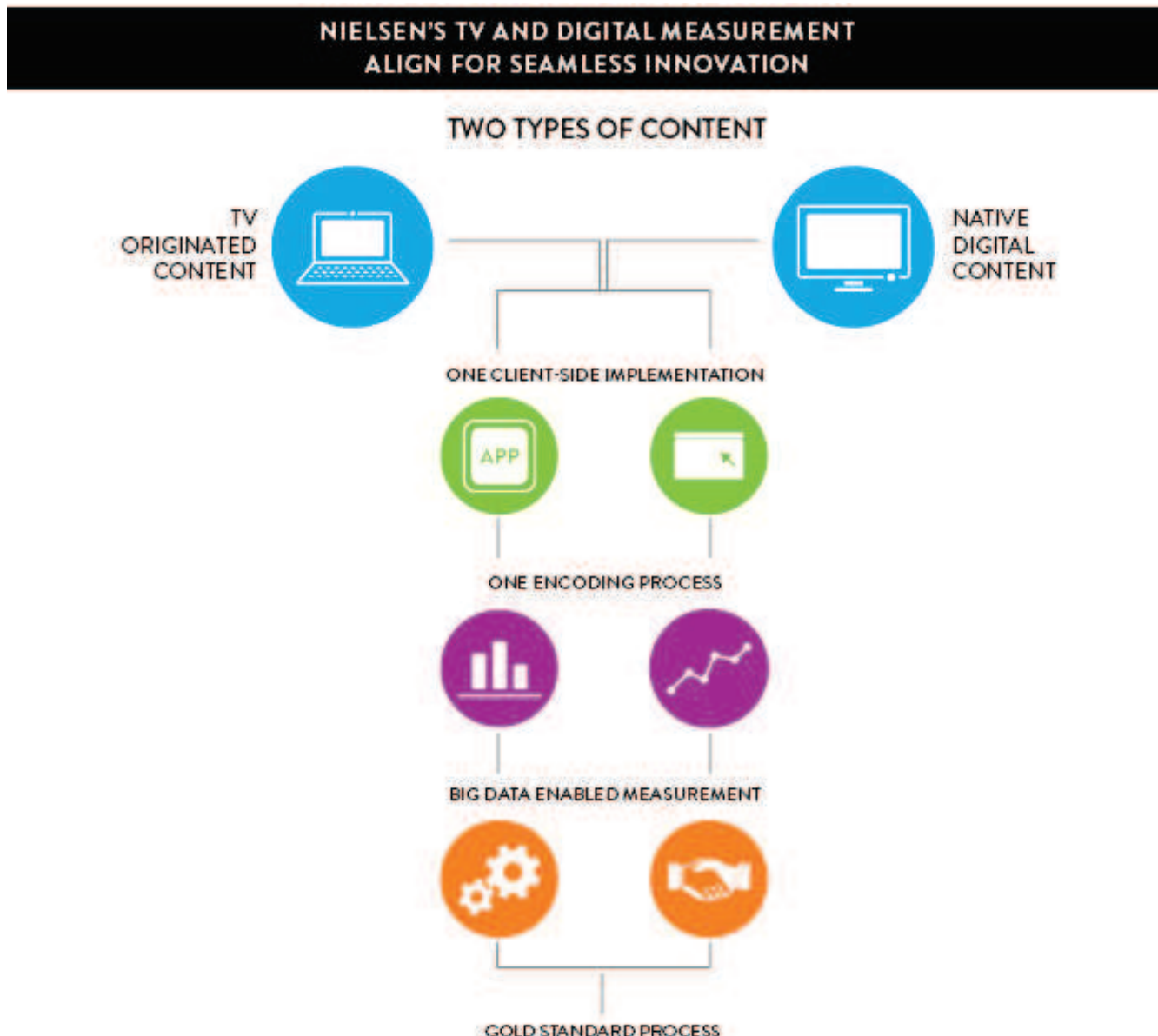
For the past several months, Nielsen has been sharing with clients and industry leaders how it plans to incorporate audiences viewing TV content on digital devices into traditional TV measurement for the 2014-15 TV season. Today, this effort took a big step forward as Nielsen confirmed to clients that it will make the software developer kit (SDK) that enables this measurement available for implementation in mid-November.

"We've been working hard to deliver this new SDK and are excited to be able to deliver a single client solution that supports both the linear (TV style) and dynamic (Internet style) ad models," said

Megan Clarken, EVP, Global Product Leader, Nielsen. "This unified encoding approach for video enables measurement to follow content across screens and ad models."

This unified encoding approach for video enables measurement to follow content across screens and ad models. For example, if a broadcaster makes a TV show available for viewing on a digital device and it meets the ad load and timeline requirements for TV ratings, then that viewing will credit to the Nielsen TV ratings. If that content is not eligible for TV ratings—due to elapsed crediting time, dynamic ad insertion or because it originated from the Web itself—then the viewing of it will be included in Nielsen Digital Ratings, specifically Nielsen Digital Program Ratings for content ratings and Nielsen Online Campaign Ratings™ for the ad rating.

The best part about this approach is that the patent-pending Nielsen technology behind the SDK will know where to credit the viewing, because it will analyze the audio **watermarks, metadata or tags associated with the content and related advertising.**





Source: Nielsen



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In order to capture the breadth required to measure mobile viewing, we'll use big data and a census-style measurement approach that matches demographic information in a privacy safe way via data providers, such as Facebook, and is calibrated with Nielsen's National People Meter panel.

This revolution in viewing measurement mirrors the innovation we've seen in technology. Not only does it seize the spirit of how consumers are putting that technology to use, but it also keeps the different kinds of viewer in mind. And the real benefit therein is that it accurately reflects the viewer best reached by the traditional TV ad model while enabling a comparable metric to reach and measure digital viewers as well.

Tagged: [AUDIENCE MEASUREMENT](#)

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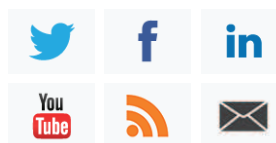
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